

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM FIRE & CASUALTY
COMPANY,

UNPUBLISHED
October 5, 2010

Plaintiff-Appellee,

v

KEVIN MARTIN SAMPHERE, TRICIA
RELING, as Next Friend for ZACHARY
HAAPALA, a Minor, and KIMBERLY MARIE
HAAPALA,

No. 290354
Mackinac Circuit Court
LC No. 08-006510-CZ

Defendants-Appellants.

Before: WHITBECK, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendants appeal from the circuit court's grant of summary disposition in favor of plaintiff. We affirm.

I

Defendant Kevin Samphere was convicted of first-degree child abuse by a jury in a criminal trial. The jury was instructed that, to be found guilty, Samphere would have had to "knowingly and intentionally cause serious physical harm to Zachary Haapala." This Court affirmed Samphere's conviction in *People v Samphere*, unpublished opinion per curiam of the Court of Appeals, decided November 10, 2009 (Docket No. 283711). Samphere maintains his innocence and states that the incident in which Zachary was injured was an accident. Plaintiff State Farm Fire & Casualty Company (State Farm) is defendant Samphere's insurance company and would like to use Samphere's conviction of first-degree child abuse as proof of intent necessary for State Farm to avoid the duty to defend and indemnify Samphere in civil litigation relating to the incident. State Farm's insurance policy with Samphere states that State Farm is under no obligation to defend and indemnify the insured against injuries that were the result of the insured's "willful and malicious acts."

II

Defendants contend that the trial court erred in concluding, as a matter of law, that defendant Samphere's conviction of first-degree child abuse established Samphere's intent for purposes of denying insurance coverage. We disagree.

The doctrine of collateral estoppel bars parties from relitigating issues that have already been litigated and decided. *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006); *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). Generally, collateral estoppel can only be raised when the party seeking to raise it would have been bound by the earlier decision had the decision been decided in the other party's favor. This requirement is known as mutuality. See *Lichon v American Ins Co*, 435 Mich 408, 427-428; 459 NW2d 288 (1990). But, mutuality is not required when collateral estoppel is being used as a defense against a party who has already had the opportunity to litigate the issue. *Monat v State Farm Ins Co*, 469 Mich 679, 680-1; 677 NW2d 843 (2004).

Even though defendant Samphere maintains that he is innocent and that the issue of intent has not been decided, the issue of intent was decided in the criminal proceeding. The jury instructions in defendant Samphere's criminal trial indicate that the crime of first-degree child abuse is an intentional crime. In that case, the jury was instructed as follows:

The Defendant says that he is not guilty of Child Abuse in the First Degree because he did not intend to knowingly or intentionally cause serious physical harm to Zachary Haapala. The Defendant says that his conduct was accidental. If the Defendant did not intend to knowingly or intentionally cause serious physical harm to Zachary Haapala he is not guilty. The prosecutor must prove beyond a reasonable doubt that the Defendant intended to knowingly or intentionally cause serious physical harm to Zachary Haapala.

The Defendant is charged with a crime of First Degree Child Abuse. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt. . . . Second, that the Defendant either knowingly or intentionally caused serious physical harm to Zachary Haapala, and by serious physical harm I mean any physical injury to a child that seriously impairs a child's health, or physical well-being, including but not limited to, various types of damaging including burns as we see here.

The jury instructions use the words "knowingly" and "intentionally." The jury must have found that defendant Samphere intended to harm Zachary before they could have found Samphere guilty of first-degree child abuse. According to the jury, the incident was not an accident, nor was it negligence. The issue of intent has been properly litigated and decided in Samphere's criminal trial.

Defendant Samphere's insurance policy with plaintiff State Farm includes language that excludes coverage from injuries that the insured intended to happen:

a. **bodily injury, personal injury, or property damage:**

(1) which is either expected or intended by an **insured**; or

(2) to any person or property which is the result of willful and malicious acts of an **insured**. [Emphasis in original.]

The term "willful" was included by State Farm to exclude those injuries that were intended by the insured. The term "willful" is defined by Black's Dictionary as "voluntary and intentional" Black's Law Dictionary (8th ed, 2004). According to the insurance policy, once State Farm can prove that the injury was intended, State Farm can avoid the duty to defend and indemnify Samphere.

Because defendant Samphere had the opportunity to litigate the issue of intent in his criminal trial, State Farm can invoke collateral estoppel. The trial court properly allowed State Farm to submit Samphere's criminal conviction as conclusive evidence of his intent to injure Zachary.

III

Defendants claim that the trial court erred when it dismissed this case with prejudice since the pending appeal on defendant Samphere's criminal case could undercut the reasoning for granting plaintiff summary disposition. Defendants also claim that the trial court incorrectly exceeded the relief requested by plaintiff since defendant Tricia Reling, as next friend of Zachary, had dismissed all claims regarding intentional acts. We disagree.

The trial court properly granted plaintiff State Farm summary disposition on the grounds that the verdict in Samphere's criminal trial can serve as proof of intent in order for State Farm to avoid the duty to defend and indemnify Samphere. On appeal, this Court affirmed Samphere's conviction, and the Supreme Court denied certification. The doctrine of collateral estoppel prevents the parties from relitigating the issue of intent.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Stephen L. Borrello